IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4887 OF 2003
IN
FIRST APPEAL (ST) NO. 43032 OF 2003

Municipal Corpn. For Thane ...Appellant
Vs.
Russi Manchershaw Todiwala & Ors. ...Respondents

Mr. R.S. Apte, Advocate for Appellant
Mr. K.K. Malphatale, Advocate for Respondents

CORAM: SMT.ROSHAN DALVI,J.
DATED: 22ND JUNE, 2007

P.C.

1. The impugned decree is passed in a Suit for possession. Consequent upon the prayer for possession and the grant of decree for possession, the Suit is also decreed for compensation. The decree is not a money decree. The prayer and the relief for compensation follows as a matter of corollary to the prayer and the decree for possession. Hence, the provisions of Order 41 Rule 1(3) for deposit of the decretal amount for grant of stay does not apply. In essence in the Appeal the material question before the Court would be whether the Suit for possession was proper and the decree for possession came to be correctly granted. If that is not so, the

question of compensation would not arise. If the decree for possession is correctly granted, compensation would follow as a matter of course. Until that is seen, no deposit of amount can be made. Hence, the application is granted and there shall be a stay of the Judgment and decree dated 15th October, 2003 in Special Suit No.101 of 1994. It may be mentioned that though this Application is taken out in 2003 and served, no affidavit in reply is filed. The application is made absolute in terms of prayer clause (a).

(SMT. ROSHAN DALVI, J.)